Opening Statement

Chairman Michael G. Oxley

House Financial Services Committee

Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises

"Regulation NMS: The SEC's View"
March 15, 2005

Thank you, Chairman Baker. Chairman Donaldson, welcome back to the Financial Services Committee. In case you don't get enough of us today, you'll be coming back for more when you return in April to talk to us about Sarbanes-Oxley. We look forward to having you here for that occasion as well.

Today, our topic is Reg NMS, and I want to begin by commending Chairman Baker's outstanding leadership on the important and difficult issues raised by the proposal before us today, Regulation NMS. I have found the Financial Services Committee's five previous hearings on this Securities and Exchange Commission initiative to be extremely informative.

The threshold questions for me are, what kind of marketplace do we want to create for the 21st Century? And in what direction do we want the markets to go as they evolve and adapt to technology?

My approach to these complex issues is governed by the belief that Congress should work to reduce or eliminate any regulatory advantages that inhibit competition and artificially preserve market share. As an advocate of free markets, I believe that we should move the National Market System toward more robust competition, more investor choice, and greater investor protection.

Of course we must be guided by best execution for the investor. If an investor misses the best price, that's not best execution. If a trade cannot be completed, that's not best execution.

At the Subcommittee's spirited hearing last month, six major market participants — Nasdaq, Instinet, Bloomberg, Knight, Schwab, and Citadel — all expressed opposition to the portion of the Reg NMS proposal that would preserve and expand the trade-through rule.

As a matter of applying free-market policy, I share that view. While the trade-through rule had its purpose in an earlier era, today's technology has rendered it regulatory and anti-competitive. As I discussed at the last hearing, let's remember the broker's fiduciary duty to obtain best execution of his clients' orders is a more efficient way of ensuring investor protection.

Therefore it does not make sense, it seems to me, to extend the trade-through rule to the Nasdaq market, which has operated efficiently and competitively without it. I can think of no compelling reason to expand the rule, with its associated and quite significant compliance costs, to the vibrant Nasdaq marketplace.

If the SEC were to modify the proposal so that the trade-through rule is not expanded, that is an outcome that I think most interested parties could support. It strikes me as a sensible compromise that would improve the status quo. A final rulemaking that resists the urge to over-regulate the Nasdaq market would include significant improvements over the existing regulatory structure. The Reg NMS trade-through provision as applied to only exchange-listed stocks would be more enforceable than the current rule and would recognize the difference between automated and manual markets.

Reg NMS, as modified, would encourage the NYSE to continue to modernize its market. The Hybrid Proposal crafted by the Exchange is an important step in this direction. I want to commend John Thain for his leadership and vision. I know he is committed to serving investors in this age of rapidly changing technology.

We are nearing the end of a long process. I would like to commend the Commission and its staff for their hard work over the past several years. This is a difficult and complex area, and I certainly recognize the good intentions and good will of people on all sides of the issues.

I yield back.

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